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***Via Electronic Submission Only to:
1605bgeneralguidelines.comments@hq.doe.gov***

The attached comments (See Attachment 1) by the Emissions Marketing Association (EMA) are in response to the notice of inquiry by the U.S. Department of Energy (DOE) regarding the "General Guidelines for Voluntary Greenhouse Gas Reporting; Proposed Rule" (68 Fed. Reg. 68204 (December 5, 2003)).

EMA is a non-profit trade association whose mission is to promote the advancement and application of policy and regulation relevant to market-based emission trading systems.

EMA currently represents over 250 individuals from nearly 180 companies worldwide (See Attachment 2 for a listing of member companies). EMA members engage in trading environmental products in markets including, *inter alia*, the sulfur dioxide (SO₂) and nitrogen oxide (NO_x) markets in the United States; renewable energy credits (RECs) in the U.S. and Europe; and greenhouse gases in voluntary and emerging regulatory markets in the U.S., Canada and Europe.

EMA has limited its comments to those aspects of the guidelines that (a) have a potential impact on the existing voluntary market for greenhouse gases, or (b) may impact the development of a future regulatory market should lawmakers seek to limit greenhouse gas emissions through a market-based approach.

EMA appreciates the opportunity to provide these comments on DOE's undertaking to revise the complex 1605(b) reporting program, and looks forward to the opportunity to comment on the Technical Guidelines when they are issued later this year. Please do not hesitate to contact me if EMA can provide any clarification to the comments.

Respectfully,

Daniel L. Chartier
President

**Comments of the
Emissions Marketing Association (“EMA”)
On the Proposed Revisions to the Department of Energy’s
Voluntary Greenhouse Gas Reporting Program
Originally Established Pursuant to
Section 1605(b) of the Energy Policy Act of 1992**

Section 1: Ownership of reductions must be clear for an efficient and robust market to develop.

The Voluntary Greenhouse Gas Reporting Program (1605b) is intended to facilitate, not create, a market for greenhouse gas reductions. A key component of a successful market is clear ownership, and therefore the right to sell, a unit of greenhouse gas reduction.¹ The 1605b General Guidelines and Technical Guidelines should clearly indicate which entity has ownership, and thus the right to sell or trade the reductions, avoidances and sequestrations they register/report and register. EMA recognizes this issue is not as black and white as demonstrating direct or indirect emissions reductions, but stresses that clear designation of ownership rights must be a result of registering reductions through the program. Original ownership of emissions reductions should be assigned to the party that caused the reduction, avoidance or sequestration to occur.

The Department of Energy may also want to consider including in the program a means to track reductions (e.g., via serialization), so a traded unit of greenhouse gas reduced can be traced back

¹ Hereafter, “greenhouse gas reductions” or “greenhouse gas reduced” shall refer to emissions reduced, avoided or sequestered.

to its original creation. This will be particularly useful as the market develops if there is a perceived difference in value based on reduction origination. The commonality among emissions reduced, avoided or sequestered that are recognized by the 1605b program is the U.S. Government's stamp of approval that imparts confidence that greenhouse gases were in fact reduced.

Section 2: The revised 1605b general guidelines must provide for creation of a commodity that will be tradable in the developing greenhouse gas trading markets.

The quantity of emission reductions that will be "reported" by participating volunteer companies will be larger if the revised 1605b system results in the creation of a commodity. Entities will be more likely to undertake activities that result in greenhouse gas reductions if there is the potential for these reductions to be tradable. A robust, open trading market requires a single, fungible article of trade. A commodity cannot result from a bifurcated system of "reporting" and "registering" which creates artificial, multiple classes of reductions.

In addition to a clearly defined commodity markets need, especially in their formative stages, a degree of certainty to allow for proper and rational development. Under the original 1605b program, a high number of "trades"² of emission reductions occurred between consenting parties. While it is recognized that these early trades were purely voluntary and done in the absence of legislation mandating greenhouse gas reductions it is disconcerting that the current proposal disregards the actions of early participants who relied on the original 1605b program to report

² The volume of such trades was high enough that EIA chose to issue letter guidance to firms seeking direction on how to transfer reductions previously reported by one party, to another party.

emissions reductions, and subsequently trade these reductions in good faith. In fact, many of the purchasers of reductions were those companies seeking to go beyond business as usual. These companies increased the body of knowledge on the methods for accurately measuring and reporting emissions and emissions reductions, many of such advances which have been proposed for incorporation into the revised 1605b program and undoubtedly into the pending Technical Guidelines. Leaving aside the political implications from ignoring the past reported reductions and trades, the fact is the lack of certainty brought about by the action will have a chilling effect on the nascent voluntary market for tradable emission reductions. Very simply, what incentive does an entity have to pursue reductions on its own or to acquire reductions from another party if it fears that a future revision of the Guidelines will invalidate their efforts, as the revised program proposes to do with reductions registered prior to 2002. To allow the continued development of a voluntary market the DOE should recognize and include all tons reduced, avoided or sequestered, particularly those achieved through projects beginning with the period 1987 to 1990.

The unit of measure must be a metric ton of carbon dioxide equivalent, using global warming potentials identified by the Intergovernmental Panel on Climate Change (IPCC), to conform with current industry practice. (The technical guidelines should address how past reported tons are treated in the future if the IPCC factors change.) This unit is already an accepted unit in existing markets.

While intensity measures may be useful and informative for other purposes, they cannot be directly traded in an open market because their basis will differ by industry. For example, one

industry might report intensity based on kilowatt-hours of electricity while another gallons of product produced. Intensity reduction measures should be used by participants to compute metric tons of carbon dioxide equivalent, using calculations supplied and approved by DOE. Such computation methodologies must be provided and supported by the United States government through the DOE and these 1605b guidelines.

Finally, the commercial value of emission reductions will be set by the market. There is no need for DOE to create a separate class or designation for reductions created through projects, through efficiency improvements, or achieved prior to 2002. The role of DOE should be to facilitate entities' registration of the tons reduced, avoided, or sequestered, and to let the market determine their appropriate value.

Section 3 The role of transferability in 1605B

The transferability of financial instruments such as registered reductions requires uniformity in measurement standards, a mechanism for clearly establishing ownership, and an adherence to basic financial standards so as to enable the transfer of value either internally or externally. This would establish currency. For the most part, the proposed guidelines accomplish these ends. However, certain refinements would allow the 1605(b) Program to provide greater support for transferability.

From the outset, the sort of rigor promised by the revised guidelines will allow emitting corporations to identify, extract and exchange registered reduction values either internally amongst strategic business units, or externally with other emitters. It will also allow for the

intermediation of registered reduction offsets and the transferal of risk through various forms of financial entities.

All emergent markets require these elements in order to sustain liquidity, efficiency, currency and fairness:

- Producers and consumers;
- Price and volume transparency; and
- An identifiable and fungible commodity.

While emitters are eager to produce and/or extract the values associated with registered reductions, they are also quite eager to manage the physical and financial risks associated with producing emissions. A stable and understandable currency allows emitters to answer corporate questions such as what are the tradeoffs in acting “now versus later” or “physical versus financial” on upgrades, retrofits and financial options. This is part of any corporation’s decision analysis process.

Establishing a stable and uniform standard for inventories, registries and certification along with a sound financial basis for transfer of registered reductions is essential. In the evolution of emergent markets, it is referred to as “measurement, then management”. It establishes level and equal footing for all participants.

As discussed above, the proposed guidelines would put much of the needed structure in place, thereby promoting transfers and value creation in the private emissions trading market.

However, EMA and its members emphasize that DOE should consider certain refinements.

First, the proposed guidelines say little about how the database for registered reductions will be structured. As discussed in the above sections of these comments, it is vitally important for transferability that the database be a platform on which participating entities can: (1) clearly track which entities own which registered reductions and (2) record, in as close to “real time” as possible, transfers of registered reductions between entities.

Second, the provisions in the proposed guidelines place unnecessary obstacles in the way of transfers of project-based reductions. As discussed elsewhere in these comments, allowing not only small but large emitters to be able to transfer project-based reductions will promote more participation in the program, more total emission reductions and a more liquid and vibrant private trading market.

Third, in the preamble’s discussion about offsets, DOE solicits comment as to whether the guidelines should allow a non-reporting entity to “enter into agreements permitting some of its emission reductions to be registered by one entity and the remainder by one or more other entities.” [68 Fed. Reg. 68204, 68213 (Dec. 5, 2003)]. EMA members answer strongly in the affirmative. Not all companies will find it feasible or cost-effective to participate in the 1605(b) Program on an entity-wide reporting basis – but nevertheless might have soundly-designed projects with real emission reductions. Allowing such companies to sell portions of their reductions to multiple different participating entities is fundamental to a liquid private emissions trading market.

Finally, the preamble’s discussion on offsets also solicits comment as to whether a reporting entity that seeks to register another entity’s reductions should be required to “demonstrate that it

helped finance or manage the achievement of the emission reductions achieved by the other entity.” [Id.] We presume that DOE’s concern here is to ensure that offsets do not consist of “anyway” reductions. Yet, if the “seller” of an offset has met all of the requirements for calculating reductions set forth in the guidelines, that should provide adequate assurances that the project reductions are sufficiently “additional” – without the further demonstration suggested in the preamble. The demonstration rule reflects a “financial additionality” type of approach that even was abandoned in the context of the Kyoto Protocol.

Moreover, the demonstration rule could have the unintended consequences of preventing many perfectly good offset transactions. For example, some offset “sellers” develop a project without the direct financial assistance of a “buyer” but rather *in anticipation of* a buyer and with the knowledge that the project only will be economical if a buyer ultimately provides carbon financing. Yet, under the demonstration rule, it is unclear whether such an arrangement could go through as an offset transaction.

In addition, the demonstration rule would have the effect of eliminating any “secondary” market for offsets. The ability not only to buy but also to then re-sell emission reductions is critical to the evolution of a vibrant, cost-effective emissions trading market. Yet, under the demonstration rule, the original “buyer” of offset reductions would not be able to resell the offset reductions to a secondary buyer – because there would be no way for any secondary buyer to demonstrate that it had “helped to finance or manage the achievement” of the original reductions.

For these reasons, EMA and its members recommend that DOE not adopt these further restrictions on offset transactions.

Section 4 Entities that can provide the proposed project registration certification should be allowed to register project-based reductions.

EMA recognizes the emphasis in the proposed Guidelines on entity-wide corporate emission reports fulfills many of the original reporting objectives of the 1605(b) program. However, the collective experience of EMA members in existing greenhouse gas and other emissions trading markets suggests that there also is a critically important role for individual emission reduction projects, yet such a role is precluded by the current Guidelines. EMA recommends that DOE revise the Guidelines to allow all entities that can provide the proposed project registration certification to register project-based reductions. Allowing registration of all project-based reductions will: 1) promote greater participation, 2) increase the amount of reductions promoted by the program, 3) spur technological innovation and capital investment in reduction activities, and 4) support the development of private emissions trading markets, collectively achieving the underlying environmental [and social] objectives of the program in the most efficient means possible.

Many of our members report that companies that might be deterred from participation in the 1605(b) program by the substantial costs of creating an entity-wide emissions inventory, nevertheless would implement and register project-based reductions if given the opportunity.

Large-scale, project-based reductions could be registered without compromising the environmental integrity of the 1605(b) database. Some observers believe that project-based reductions generated by large emitters are inherently less credible than entity-based reductions.

This reflects a presumption that without a net entity-wide reduction, the project represents “leakage”: an isolated activity of an entity failing to achieve a real, or net, environmental benefit. Yet, the Guidelines already require that entities certify that reports of project-based emission reductions “exclude[] any emission reductions that might have resulted from reduced output or *were caused by actions likely to be associated with increases in emissions elsewhere within the entity’s operations.*” Sec. 300.8(b)(5) (emphasis added). Such a certification should provide sufficient assurances that project-based reductions did not result from leakage. In addition, entities reporting and registering project-based reductions could opt for independent verification.

So long as an entity provides the foregoing certification, it should be possible to register project-based reductions even in situations where total entity emissions have not decreased. This is because the goal of the Administration’s climate policies is to encourage companies to look voluntarily but aggressively for ways to reduce emissions in every part of their business. If they can do so in ways that create real reductions and do not increase emissions elsewhere, you have furthered that goal and created a net environmental benefit regardless of the total organization’s emissions compared to the last reporting period.

Businesses typically evaluate capital investments and operational changes as “projects” from which specific results (primarily financial) are anticipated. Increasingly, entities are considering the emissions effect of the proposed project in evaluating whether to proceed. In cases where net emission reductions are expected to occur from a project, anticipated and increasing monetary and non-monetary reduction values are causing certain reduction projects to be reconsidered and implemented. Refusing to allow project registration eliminates material incentives companies are

beginning to consider in their investment decisions. Eliminating these incentives reduces the number of projects, and thus the total amount of reductions that could be generated by the 1605(b) program.

The proposed Guidelines do, however, provide significant flexibility in defining the boundaries of an “entity”, allowing a small percentage of reduction projects to be registered because the legal entity performing the project does not have operational boundaries outside the project. However, EMA does not believe this exception adequately addresses the need for broad registration capability for certified projects. Instead, allowing exceptions for subsidiary reporting of projects will simply force some companies to incorporate their projects or reshuffle their organizational structure. It will not force reductions in unrelated operations, and it creates an artificial distinction that is entirely eliminated by allowing registration of certified projects.

Additionally, if project-based reductions are excluded for all but small emitters and reporting entities, any offset market that ultimately develops in the US will, because of the entity reporting requirement, involve a much smaller segment of the economy in reduction activities. This is counter to instigating, developing and harnessing the entrepreneurial source of emission offsets and will result in dramatically fewer reductions for sale, increasing the cost of the remaining offsets (and the aggregate cost to society) and result in higher national greenhouse gas emissions.

The registration of a broad variety of certified, project-based reductions is also critical to the development of an effective and efficient emission trading market. Efficient markets require that investors have immediate and equal access to purchase and sell highly liquid assets. Restricting registration of large reduction projects to entities first performing an entity-wide accounting

(further encumbered by a requirement the entity have achieved net, entity-wide annual reductions) creates restrictions on participation which do not further the goals of 1605 and actually impede the underlying environmental goal of reducing emissions. (Improved reporting, recognition only in circumstances of a net environmental benefit, rigor of evaluation and maximum participation can all be met or enhanced by allowing large emitters to register certified project reductions without an entity-wide assessment.) Further restricting project-based registration to a third party which has first invested in or managed the reduction project creates a further impediment to interest and incentives associated with the reduction activity, imposes artificial minimums on the size and transaction cost of the investment, and should be eliminated from the Guidelines along with any restriction on the size of an entity allowed to register such reductions. Effective markets are created when the nature and qualifications of the asset being traded are clearly identified and controlled, but the opportunity to create and sell those assets is open to the broadest possible range of participants.

The EMA recognizes that DOE has not yet indicated in the Guidelines that 1605b will enable or deliberately facilitate the private transfer of emission reductions, although as indicated above we strongly believe this program should immediately effect this change. However, EMA also notes the current provisions of the Guidelines provide “special recognition” for those reduction and avoidance activities qualifying for registration. Regardless of whether the 1605 program ultimately provides a mechanism for the transference of reductions, EMA believes the current Guidelines will cause private industry to assign greater value to registered reductions than reported reductions. As the value attributed to reduction activities is expected to increase over time, private industry will almost certainly develop the means to transfer this value. The market

may well develop around the 1605 program if special recognition (value) is reflected by the elevated process of registering reductions, and in doing so undermine the potential benefit and effectiveness which could have occurred if a mechanism for the transferability of reductions were incorporated in the current structure of the program. Therefore, EMA believes DOE should facilitate, (but not manage) the development of a private trading market for emission reductions through the program, and believes this purpose would be greatly enhanced by allowing registration of certified, project-based offsets from all entities, regardless of size and without requiring an entity-wide emission inventory or participation in the underlying project

Finally, many US and international greenhouse gas registries in existence allow for registration of project-based reductions. Project-based offsets are a fundamental part of the structure of most of the existing international trading schemes because those schemes rely on the offset market to achieve the underlying policy objectives as efficiently as possible. Excluding projects from registration in the 1605(b) program will therefore also serve to further separate and isolate the US from the rapidly evolving and consolidating global offset market for greenhouse gas reduction rights

In conclusion, if the 1605(b) Guidelines fail to recognize project-based reductions that successfully eliminate environmental integrity concerns, then the 1605(b) program will significantly undermine both the environmental and economic goals of any climate change program. Eliminating the economic incentive for creative and entrepreneurial efforts to reduce emissions within non-reporting entities will lead to fewer reduction projects and higher costs for offset buyers, and society at large as a result of the reduced supply.

Section 5 Third parties should have the right to register and hold title or partial interest in emissions reductions credits to facilitate the goals of the White House Global Climate Change Policy Book and the Secretaries of Energy, Commerce, Agriculture and the Administrator of the Environmental Protection Agency.

The success of any market is largely a function of its size and liquidity. Most markets, including commodities and securities markets, provide for various “third party” rights. That is, they allow parties other than the generator or producer of the traded article to participate as buyers and sellers in the market. Markets rely on the involvement of these third party entities to foster greater participation (and hence greater supply) and facilitate the transfer and valuation of commodities and derivative assets, which ultimately leads to greater liquidity, more efficient markets and lower transaction costs.

A. The Proposed Guidelines Envision a Limited Role for Third Parties.

As proposed, the Guidelines would permit entities to report and register emissions reductions achieved by others, as long as the entity that achieved the reductions observed all of the requirements applicable to reporters and the entities involved indicated that they had an agreement stipulating who would report the emissions reductions. DOE requests public comment on a number of issues, including whether the third party must meet all direct reporting requirements, whether the third party must provide separate certification, whether it should be able to register part of another entity’s total emissions reductions, and whether the third party must demonstrate that it helped finance or manage the project. The Guidelines suggest that one

possible approach would be to avoid these issues by requiring direct reporting by the entity that generated the emissions reductions.

B. The White House Global Climate Change Policy Book and the Four-Agency Letter Suggest That the Program Should Be Structured to Permit Trading of Emissions Reductions Rights.

The February 14, 2002 White House Global Climate Change Policy Book states that the “The President directed the Secretary of Energy to recommend reforms to ... give transferable credits to companies that can show real emissions reductions.” The January 8, 2002 letter to the President by the Secretaries of Energy, Commerce, & Agriculture and the EPA Administrator contained a list of recommend improvements to the current guidelines intended to carry out the President’s February 14, 2002 directive. The Secretaries recommended the development of “fair, objective, and practical methods for ... awarding transferable credits for actions that lead to real reductions.” The letter also stated that “[p]roviding incentives and recognition for actions to reduce the concentrations of greenhouse gases in the atmosphere will facilitate their adoption.” These statements and others made by the President in discussing measures to address climate change all suggest the use of market mechanisms to encourage maximum greenhouse gas emissions reductions at least cost. Even in the absence of a federal regulation-based greenhouse gas emissions trading program in the U.S., a voluntary trading market continues to develop. However, in order for a greenhouse gas market to function as intended, it must encourage broad participation to increase the size and liquidity of the market.

C. The Role of Third Parties in the Greenhouse Gas Emissions Trading Market.

Third parties functioning within the greenhouse gas emissions trading markets, both the voluntary market that is developing in the U.S. and the more regulated international markets, currently include auditors, consultants, emissions brokers, risk managers and aggregators. As these markets continue to develop, there is objective evidence of a growing interest from specialists operating in other transactional markets to enter emissions markets as market makers, underwriters and parties providing specialized market products. Collectively, these third parties provide expertise, access to related markets and products, capital, risk mitigation and other services the supplier and buyer typically will not, and often cannot, provide.

Third parties play another critical role in the development of the greenhouse gas emissions trading market by acting as buyers and sellers of emissions reduction reductions. Allowing third parties to hold title to emissions reductions increases their incentive to service the market, increases the number of players in the market, and thereby achieves the increased liquidity that is critical to market success.

The participation of third parties leads to more efficient markets and lower transaction costs, which in turn encourages greater participation in the market by those with a lower tolerance for risk. As evidenced by mature commodity markets and some of the other environmental markets in the U.S., the ultimate result is lower aggregate emissions achieved at a lower cost than under a command and control regulatory model.

D. Modifications to the Draft Guidelines Will Facilitate Appropriate Market Development Without Management by DOE.

As detailed above, EMA is not advocating that DOE function as the manager of the greenhouse gas emissions trading market, but rather as the registrar for creation and transfers of emissions reduction rights. Thus, ownership, identification and publication of an emissions reduction right (or transferable credit, if one were created as directed by the White House Global Climate Change Policy Book) would ultimately be performed by the Register and ownership disputes among buyers and sellers would be controlled by common law. As contemplated by the draft Guidelines, there should be no requirement that parties post and publish underlying reduction sale agreements.

The Guidelines should allow any party operating under agreement with the generator of an emissions reduction to register, purchase, transfer, or lien as security the emissions reduction. The documentation required to register the reduction should require specific identification of the emissions reduction sufficient to provide reasonable certainty of the integrity of the reduction, or to provide a basis for recourse against the registrant in the event of fraud. If reductions are serialized or otherwise marked for identification purposes, as discussed above, the Register could easily track the chain of title to a specific reduction. In the absence of an identification mark, the registrant could be required to document the chain of title.

Third parties should not be required to meet all direct reporting requirements (i.e., to file entity-wide reports on behalf of the credit generator). As detailed above, such a requirement will adversely affect the number and type of market participants and the transferability of reductions,

which will prevent or impede effective project-based registration. Many *generators* will find it difficult to register emissions reductions or participate in reduction sales given the entity-wide reporting requirement. If generators themselves find this requirement too challenging to warrant participation in the program, third parties could likely find it impossible to obtain and compile such data from generators.

EMA believes that the third party could be required to provide a separate certification they have entered into an agreement with the generator or with another party with marketable title to the emissions reduction, and that they have all legal rights in and to the reduction. Although, as stated above, DOE should not act as the enforcer of the program, such certifications could provide the basis for a common law claim by the rightful owner in the event that a reduction was registered fraudulently.

As discussed above with respect to generators of emissions reductions, third parties should also have the right to register only part of another entity's emissions reductions. While requiring whole entity registration may facilitate management and enforcement of the program, it is impractical in many other respects. Restricting the right to separate an entity's or project's emissions reductions would result in lost reductions, making it more difficult to achieve the President's 18% intensity reduction goal. It would also reduce the number of market participants and inhibit emissions reduction sales, both of which are contrary to the development of an efficient market.

Third parties should not be required to demonstrate that they helped to finance or manage a project. Such a requirement would also lead to lost reductions and decreased market efficiency.

For example, aggregators serve an important role in greenhouse gas emissions trading by collecting a number of projects or reductions and minimizing the administrative expense associated with registering or trading these reductions through consolidation and institutional knowledge. This role is particularly important for smaller projects or quantities of reductions, where either the generators do not have the finances or the expertise to register or sell the reductions themselves, or where the quantity of reductions is too small for a standalone sale. If aggregators were prevented from registering or trading based on the fact that they did not finance or manage these projects, then the underlying reductions would, in many cases, not be registered at all.

The draft Guidelines suggest that one possible approach would be to require direct reporting by the entity that generated the emissions reductions. This is an end that does not justify the means. The Guidelines should enable third parties to register emissions reductions provided their registrations contain a complete report on the generation of the reductions (who generated them and how were they generated, including a demonstration of an appropriate baseline) and perhaps, as discussed above, a certification that the third party has entered into an agreement with the generator of the emissions reduction. Such a system would provide more flexibility for registering emissions reductions without compromising the integrity of the reductions registered.



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